

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARVIN BELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No. 05-60098

Criminal Case No. 01-80274

Hon. John Corbett O'Meara

**OPINION AND ORDER DENYING PETITIONER'S § 2255 MOTION**

Petitioner pled guilty to possession of cocaine with the intent to distribute. On June 24, 2002, Petitioner was sentenced to 60 months in prison and a final judgment was entered in his criminal case. He did not appeal. At the sentencing hearing, the court made a judicial finding that Petitioner possessed a firearm during the commission of a drug offense, and accordingly gave Petitioner a two point enhancement under the Federal Sentencing Guidelines. After the recent United States Supreme Court decision in United States v. Booker, 125 S. Ct. 738 (2005), Petitioner filed a motion to vacate or set aside his sentence pursuant to 28 U.S.C. § 2255. He alleges ineffective assistance of counsel, a Sixth Amendment violation, and claims his plea was not intelligently made.

Petitioner's motion fails for a number of independent reasons. First, it was not filed within one year of final judgment, as required by 28 U.S.C. § 2255. In addition, the Sixth Circuit has recently held that Booker does not apply retroactively to cases already final on direct review. Humphress v. United States, 398 F.3d 855 (6th Cir. 2005). Moreover, defendant faced a statutory mandatory minimum sentence of 60 months, regardless of whether the court made a judicial finding of the firearm enhancement. As such, even if his claims were valid, they would

have no impact on his sentence.

Accordingly, **IT IS HEREBY ORDERED** that Petitioner's May 3, 2005 Motion Pursuant to 28 U.S.C. § 2255 is **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner's May 20, 2005 Motion for Bond Pending Habeas Adjudication is **DENIED** as moot.

s/John Corbett O'Meara  
John Corbett O'Meara  
United States District Judge

Dated: September 26, 2005